COURT NO. 2

THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Appeal from Order No. 331 of 2002

New India Assurance Co. Ltd. … **Appellant.**

Versus

Smt. Ram Kali
and others. … **Respondents.**

Coram : Hon'ble P.C. Verma, J.
Hon'ble B.S. Verma, J.

This appeal has been preferred under Section 173 of the Motor Vehicles Act, 1988 ***(in short the Act)*** against the judgment and Award, dated 10-10-2002, passed in M.A.C.T. Petition No. 174 of 2001, Smt. Ramkali and another Vs. Sri Suresh Chandra Agrawal and others, by the Motor Accident Claims Tribunal/ Addl. District Judge, F.T.C., Haldwani, Nainital, ***(hereinafter referred to as the Tribunal),*** whereby the learned Tribunal has awarded a sum of Rs. 3,61,000/- along with simple interest @ 9% per annum and directed in favour of the claimant-respondents No. 1 and 2 against the O.P.No. 3-appellant. Aggrieved, the Insurance Company-O.P.No.3 has come up in appeal with a prayer to set aside the impugned judgment and award mainly on the ground that the cover note of the Insurance Policy was not in existence at the time of accident and quantum of compensation and it has been contended the findings of the learned Tribunal are not based on evidence on record.

We have heard learned counsel for the appellant, Mr. T.A.Khan as well as learned counsel for the claimant-respondent no. 1 to 3, Mr, Zafar Ulla Siddiqui, and have carefully gone through the entire material on record including the impugned judgment and award.

Brief facts of the case are that Shiv Babu (the deceased) sustained grievous injuries being his by Car No. D.H.A.-5050 at 7 p.m. on 6.11.2001 as a result of rash and negligent driving by its driver, on the road near Abdulla Building, Haldwani. He was rushed to Base Hospital, Haldwani, where he succumbed to his injuries in the mid night the same day. His dependents/legal heirs have filed claim petition before the Tribunal. The owner and insurer of the said vehicle have been arrayed as O.P. Nos. 1 and 2 to the claim petition. Both the O.Ps. contested the claim petition and filed separate written statement. O.P. No. 1 along with his written statement also filed carbon copy of insurance certificate no. 144822 (paper no. 13-C/4) showing that the car was insured from 06.11.2001 till the mid night of 05.11.2002. It has been asserted that the accident was the result of own negligence of the deceased. The O.P. was holding a valid driving licence No. N-3114 K 1989, which is valid upto 9-8-2004. The vehicle is duly insured, therefore, Insurance Company is liable for compensation. The Insurance Company also filed written statement and pleaded that is was not informed about the accident; that the owner was not holding necessary valid papers like permit, fitness, driving licence, etc. The vehicle was being driven in breach of policy conditions rashly and negligently. Plea of collusion was also taken by the appellant and it has been alleged that the claimants have to satisfy the Tribunal regarding age, income, dependency of the deceased. Lastly, it has been pleaded by amendment that the insurance policy in question had not come into force at the time of the accident.

Learned Tribunal framed as many as five issues in the case. On Issue No.1, it has been held that the accident in question resulting into injuries and consequent death of the deceased was caused due to rash and negligent driving by the

driver of the offending car. On Issue Nos. 3 and 4, which related to insurance of the vehicle involved in the accident and holding of valid driving licence by the driver, it has been found that the insurance policy in question has come into existence at the time of accident. From paper no. 6-C/3, which is photo state copy of the driving licence of Sri Nadim Husain, it has been held that the driver of the offending vehicle was holding a valid driving licence. On Issue No.2, the Tribunal has found that the deceased was aged 48 years at the time of his death and, therefore, he comes in the age group of 45-50 years. Relying of the documentary evidence regarding income of the deceased, which is pay certificate of the deceased issued by his employer, it has been held that the deceased was getting Rs. 3,500/- per month as salary and loss of dependency has been determined after deducting 1/3rd of the salary, which comes to Rs. 28,000/- per annum. To determine the just amount of compensation for the death of the deceased, the Tribunal has applied multiplier of 12 and has awarded total compensation of Rs. 3,61,000/- along with interest, as mentioned earlier.

It has been vehemently argued before us on behalf of the appellant that the offending vehicle Car No. DHA-5050 was not duly insured at the time of accident. Reference has been made to Photostat copy of the covernote of insurance and it has been submitted that the risk covering time as per insurance cover note was w.e.f. 9.05 p.m. on 6.11.1001, which was to expire at the midnight of 5.11.2002, meaning thereby that the insurance of the vehicle was effective for one complete year. It is admitted to the learned counsel for the appellant that 9n Annexure-9, which is Photostat copy of insurance proposal the column of time after the date 06.11.2001 is left blank and the date and time of expiry therein have been noted as 05.11.2002 mid-night. It is a thing of common knowledge that when a document is

meant effective for one complete year to expire on the mid night of the date of expiry, i.e. mid night of 5.11.2002 in the present, and when this date started from 6.11.2001, it will have to be presumed that it has come into effect after the mid night of 5.11.2001, i.e. from the commencement of the date 6.11.2001, especially when no particular time of commencement has been earmarked and the relevant column has been left blank. Moreover, such a matter has come up for consideration before different High Courts and the Hon'ble Apex Court, in which it has been held that where the time of commencement of Insurance Policy has not been mentioned by the Insurer, the policy will be treated to be effective after the midnight of the previous date. We are supported in our view by the pronouncement of the Hon'ble Supreme Court in the case of ***"New India Assurance company Limited Vs. Ram Dayal" (1990, S.C.C., 2, page 680),*** in which the insurer repudiated its liability by maintaining that the policy has been taken after the accident and, therefore, it had no liability to meet the award of compensation against the owner. The tribunal accepted this stand, but in appeal, the Punjab and Haryana High Court took the view that the insurance policy obtained on the date of the accident became operative from the commencement of the date of insurance, i.e. from the previous midnight and since the accident took place on the date of the policy, the insurer became liable. This view of the Punjab and Haryana High Court has been upheld by the Apex Court. This contention of the appellant has been elaborately discussed by the Tribunal in the impugned judgment and award in the light of the case-laws referred to therein. In view of the aforesaid discussion, the argument of the appellant is without any basis and as such is not tenable. Nothing has been pointed to us to take a different view so as to warrant any interference with the findings arrived at by the Tribunal.

So far as the contention of the appellant challenging the quantum of compensation is concerned, It is most significant to mention here that the grounds of challenge available to the insurer-appellant have been enumerated in sub-Section (2) of Section 149 of the Act and no other ground is available to the Insurance Company. No permission under Section 170 of the Act has been sought before and granted by the Tribunal to the appellant to contest the case on the grounds available to the insured or the person against whom claim has been preferred. Section 170 of the Motor Vehicles Act deals with impleadment of insurer in certain cases. On a careful perusal of the said provisions of law, we are not inclined to accept the contentions raised on behalf of the insurer-appellant, because under the Act, the insurer has no right to challenge the judgment and award passed by the learned Tribunal except on the grounds as enumerated under sub-Section (2) of Section 149 of the Motor Vehicles Act, 1988. The law provides that appeal by the insurer can be filed on limited grounds and the grounds of challenge cannot be enlarged. We are fortified in our view by the Apex Court judgment in the Case of ***"National Insurance Company Ltd. Chandigarh Vs. Nicolletta Rohtagi and others" [(2002)] 7, Supreme Court Cases, 456].*** In that case, it has been observed by the Apex Court that ***"even if no appeal is preferred under Section 173 of 1988 Act by an insured against the award of a Tribunal, it is not permissible for an insurer to file an appeal questioning the quantum of compensation as well as findings as regard negligence or contributory negligence of the offending vehicle".*** Thus, in view of the law laid down by the Apex Court reported in ***(2002)7, S.C.C. 456 (supra),*** which is fully applicable in the present appeal, none of the contentions raised on behalf of the appellant is tenable and has to be ignored outright.

No other point was urged or argued before us.

Ultimately, we are of the view that the present appeal is devoid of merit and must fail.

The appeal is dismissed. The impugned judgment and award is upheld. No order as to costs.

The amount in deposit with this Court be remitted to the Motor Accident Claims Tribunal concerned.

26-08-2004 **(B.S. Verma, J.)** **(P.C. Verma, J.)**
RCP